Seelan a/l Muthaven v Public Prosecutor

HIGH COURT (MUAR) — CRIMINAL APPEAL NO 42-3 OF 2000
JEFFREY TAN J
26 NOVEMBER 2001

Criminal Law *— Prevention of Corruption Act (Malaysia) — s 4(a) — Illegal gratification — Whether trial court failed to consider the defence of innocent loan — Whether trial court assessed the credibility of the prosecution witnesses at the correct time — Whether complainant was a reliable and credible witness — Whether trial court took as corroborative evidence that was not corroborative — Whether sentence omitted to impose additonal penalty under s 13 of the Prevention of Corruption Act 1961*

This was the appellant's appeal against conviction for an offence under s 4(a) of the Prevention of Corruption Act 1961 ('the Act') for having corruptly received gratification of RM5,000 as an inducement or reward. At the trial, the defence of innocent loan was put forward but this was rejected by the trial court. This appeal was premised on the following four grounds: (i) that the trial court failed to consider the defence; (ii) that the trial court only assessed the credibility of the prosecution witnesses at the end of the case for the defence and not at the end of the case for the prosecution; (iii) that the complainant in the instant case was not a reliable and credible witness; and (iv) that the trial court took as corroborative that which was not corroborative. The public prosecutor, meanwhile, cross appealed against the sentence on the ground that the sentence omitted to impose the additional penalty mandated by s 13 of the Act.

Held, dismissing the appeal against conviction and allowing the cross appeal against the sentence:

(1) When it closed its case, the prosecution had proved the two ingredients of the offence under s 4(a) of the Act to which s 14 of the Act applied, that is: (i) a gratification was accepted by the appellant; and (ii) the appellant was at the time of acceptance of the gratification in the employment of a public body. Upon proof of those two ingredients, the existence of the third ingredient that the gratification was paid or given or received corruptly as an inducement or reward for doing or forbearing to do an act in relation to the affairs is to be presumed unless the contrary is proved. Moreover, in the present case, there was direct evidence clearly establishing that the gratification could not have been accepted not corruptly (see p 649D–H).

(2) There was no basis to say that the trial court had not considered the defence. The defence of innocent loan was carefully considered and the trial court gave sufficient reasons for not believing the defence (see p 652D–F).

(3) To say that the trial court had not assessed the prosecution evidence could not be further from the truth. The acceptance of the gratification and the employment of the appellant in a public

A body were all that were required to be proved. In the instant case, both ingredients were clearly proved, not just on a prima facie basis but on a beyond reasonable doubt basis, by irrefutable proof that would not be deprecated by the matter of the credibility of prosecution witnesses. The prima facie case was founded on such clear cut proof, that no assessment of the credibility of
B prosecution witnesses at the close of the prosecution case was at all necessary (see p 653B–F).

(4) The prima facie case was more or less ironclad and the presence of any inconsistency or discord, if any, in the testimony of the prosecution witnesses or between any of them would not have
C affected the quality of the proof of the ingredients of the alleged offence. The fact that there were minor discrepancies in the testimony of the complainant did not straightaway make him an unreliable witness and make the whole evidence unacceptable (see pp 653G–654A).

D (5) The appellant might have said to the complainant that he could not help the complainant. But whether the appellant could or could not help was not the issue. The appellant accepted a gratification other than legal remuneration. A public servant has no business to accept gratification other than legal remuneration.
E The acceptance of gratification other than legal remuneration must be explained. In the instant case, the explanation was neither reasonable nor probable (see p 655F–G).

(6) This was not a conviction without corroboration. The acceptance of the gratification was clearly corroborated. Guilt was beyond
F doubt (see p 655H).

[Bahasa Malaysia summary

Ini merupakan rayuan perayu terhadap sabitan untuk kesalahan di bawah s 4(a) Akta Pencegahan Rasuah 1961 ('Akta tersebut') kerana
G telah menerima rasuah sebanyak RM5,000 sebagai dorongan atau ganjaran. Di dalam perbicaraan, pembelaan pinjaman ikhlas telah diberikan tetapi ini ditolak oleh mahkamah perbicaraan. Rayuan ini berdasarkan empat alasan-alasan tersebut: (i) bahawa mahkamah perbicaraan gagal mempertimbangkan pembelaan tersebut; (ii)
H bahawa mahkamah perbicaraan hanya menaksir kebolehpercayaan saksi pihak pendakwaan selepas kes pihak defendan dan bukan selepas kes pendakwa raya; (iii) bahawa pengadu di dalam kes ini bukan merupakan saksi yang boleh dipercayai; dan (iv) mahkamah perbicaraan telah menerima keterangan yang tidak menyokong sebagai keterangan menyokong. Pendakwa raya telah membuat
I rayuan balas terhadap hukuman kerana hukuman tersebut tidak mengenakan penalti tambahan seperti yang dimandatkan oleh s 13 Akta tersebut.

Diputuskan menolak rayuan terhadap sabitan dan membenarkan rayuan balas terhadap hukuman: A

(1) Setelah menutup kesnya, pihak pendakwaan telah membuktikan kedua-dua unsur kesalahan tersebut di bawah s 4(a) Akta tersebut yang mana s 14 Akta tersebut terpakai, iaitu: (i) rasuah telah diterima oleh perayu; dan (ii) perayu berkerja dengan suatu badan B awam semasa beliau menerima rasuah tersebut. Setelah kedua-dua unsur yang dikatakan dibuktikan, kewujudan unsur ketiga bahawa wang telah dibayar, diberi ataupun diterima sebagai dorongan ataupun ganjaran untuk melakukan atau tidak melakukan sesuatu kelakuan yang berkait dengan urusan tersebut akan teranggap kecuali sebaliknya dibuktikan. Lagipun, di dalam C kes ini, terdapat keterangan langsung yang menunjukkan bahawa wang tersebut tidak boleh diterima sebagai bukan wang rasuah (lihat ms 649D–H).

(2) Tiada dasar untuk menyatakan bahawa mahkamah perbicaraan tidak mempertimbangkan pembelaan tersebut. Pembelaan D pinjaman ikhlas telah dipertimbangkan dengan wajar dan mahkamah perbicaraan telah memberikan alasan-alasan yang cukup untuk tidak mempercayai pembelaan tersebut (lihat ms 652D–F).

(3) Untuk menyatakan bahawa mahkamah perbicaraan telah tidak E mentafsirkan keterangan pihak pendakwaan adalah jauh daripada benar. Hanya penerimaan wang dan penggajian perayu dalam suatu badan awam yang perlu dibuktikan. Di dalam kes ini, kedua-dua unsur telah jelas dibuktikan, bukan sahaja pada tahap prima facie, bahkan pada tahap melampaui keraguan munasabah, oleh keterangan yang tidak dapat disangkal dan tidak dapat F dikecam atas alasan kebolehpercayaan saksi-saksi pihak pendakwaan. Kes prima facie tersebut adalah berdasarkan keterangan yang begitu jelas dan oleh itu tiada tafsiran kebolehpercayaan saksi-saksi pihak pendakwaan diperlukan pada penutupan kes pihak pendakwaan (lihat ms 653B–F). G

(4) Kes prima facie tersebut sangat kukuh, dan jika testimoni sebarang saksi pendakwaan tidak konsisten ataupun bercanggah, ini tidak akan menjejaskan kualiti keterangan unsur-unsur kesalahan yang dinyatakan. Walaupun terdapat perselisihan yang kecil di dalam testimoni pengadu, ini tidak menyebabkan beliau menjadi saksi yang tidak boleh dipercayai dan menyebabkan H keseluruhan keterangan tersebut tidak boleh diterima (lihat ms 653G–654A).

(5) Perayu mungkin berkata kepada pengadu bahawa beliau tidak dapat menolong pengadu. Akan tetapi sama ada perayu dapat menolong atau tidak bukan merupakan isu. Perayu telah I menerima wang selain daripada gaji yang sah. Pegawai awam tidak boleh menerima sebarang bayaran selain daripada bayaran

gaji yang sah. Penerimaan bayaran selain daripada gaji yang sah mesti diterangkan. Di dalam kes ini, penerangan tersebut tidak munasabah dan tidak berkemungkinan (lihat ms 655F–G).

(6) Ini bukan merupakan sabitan tanpa sokongan. Penerimaan bayaran tersebut jelas disokong. Kebersalahan adalah melampaui keraguan (lihat ms 655H).

Notes

For cases on s 4(a) of the Prevention of Corruption Act (Malaysia) see 4 *Mallal's Digest* (4th Ed, 2000 Reissue) paras 2339–2364.

Cases referred to

Attan bin Abdul Gani v PP [1970] 2 MLJ 143 (refd)
Balakrishnan v DPP [1969] 2 MLJ 61 (refd)
Emden v State of Uttar Pradesh AIR 1960 SC 548 (refd)
Gurbachan Singh v PP [1966] 2 MLJ 125 (refd)
Jazuli bin Mohsin v PP [1990] 2 MLJ 190 (refd)
Lee Mun Foong v PP [1976] 2 MLJ 16 (refd)
Lim Chong Kooi v PP [1965] 2 MLJ 169 (refd)
Mohamed Alias v PP [1983] 2 MLJ 172 (refd)
Mohamed Mokhtar v PP [1972] 1 MLJ 122 (refd)
Mohamed Taufik v PP [1975] 1 MLJ 36 (refd)
PP v Sukumaran a/l Sudram [1999] 4 MLJ 462 (refd)
PP v Thavananthan [1994] 2 MLJ 436 (refd)
PP v Yuvaraj [1969] 2 MLJ 89 (refd)
State of Madras v Vaidyanatha Iyer AIR 1958 SC 61 (refd)
Thavananthan a/l Balasubramaniam v PP [1997] 2 MLJ 401 (refd)

Legislation referred to

Federal Constitution art 132(1)
Prevention of Corruption Act 1961 ss 2, 4, (a), 13, 14, 15

Appeal from: Arrest Case No 61–1–98 (Sessions Court, Muar)

K Kumaraendran (*Jayasingam, YK Chong* with him) (*M Jayasingam & Co*) for the appellant.
Asliza bte Ali (Public Prosecutor) for the prosecution.

Jeffrey Tan J: These are two appeals against the decision of the Muar Sessions Court of 29 February 2000, convicting and sentencing the accused ('appellant') to a year's imprisonment for an offence under s 4(a) of the Prevention of Corruption Act 1961 ('the Act') (since repealed, on 8 January 1998 — see PU(B) 12/98), one is an appeal by the appellant against conviction and sentence while the other is a cross appeal by the learned public prosecutor against the sentence that omitted to impose the additional penalty mandated by s 13 of the Act.

The charge upon which the appellant was convicted reads as follows: A

> Bahawa kamu pada 25hb September 1997, di antara jam 2.50 petang dan 3.50 petang di dalam kereta JBR 9336 di Jalan Bakri, Muar, dalam Daerah Muar, dalam Negeri Johor, sebagai agen Kerajaan Malaysia, iaitu Lans Koperal Polis/RF 113708 yang bertugas di Ibu Pejabat Polis Daerah Muar secara rasuah telah menerima untuk diri kamu suatu suapan, iaitu wang tunai sebanyak RM5,000 (Ringgit Malaysia Lima Ribu Sahaja), daripada seorang bernama Radhakrishnan a/l Arumugam, sebagai suatu dorongan untuk melakukan suatu perbuatan berhubung dengan urusan hal ehwal prinsipal kamu, iaitu untuk meringankan pertuduhan ke atas Radhakrishnan a/l Arumugam yang ditangkap kerana disyaki melakukan kesalahan membawa pendatang Indonesia tanpa permit dan disyaki memiliki walkie-talkie serta pisau tanpa kebenaran disisi undang-undang, dan dengan itu kamu telah melakukan satu kesalahan di bawah s 4(a) Akta Pencegah Rasuah 1961, yang boleh dihukum di bawah s 4 Akta yang sama (Undang-Undang Malaysia No 57). B C

As stated in the said charge itself, the prosecution alleged that the appellant, between 2.50pm to 3.50pm on 25 September 1997, whilst in motorcar bearing registration number JBR 9336 then at Jalan Bakri, Muar, and being an agent of the Government of Malaysia, namely a lance corporal in the Royal Malaysian Police and attached to the Muar District Police Headquarters, did corruptly receive for himself a gratification of RM5,000 from one Radhakrishnan a/l Arumugam ('the complainant'), as an inducement to do an act in respect of his principal's affairs, to wit, to prefer lesser charges against the complainant who had been arrested on suspicion of having committed the offences of certain immigration offences, and of having in his possession a walkie talkie and 'pisau' without lawful authority. D E

All in all, the prosecution summoned 12 witnesses to prove the charge, whilst the defence called only the appellant as its sole witness. F

The following is an overview of the material evidence recorded by the trial court. SP1 (a Superintendent of Police who as Deputy OCPD Muar was in charge of the personnel records) testified that the appellant on 25 September 1997 was a lance corporal in the Royal Malaysian Police and attached to the Special Branch, and that the appellant was on leave from 18–25 September 1997. SP2 (a Chief Inspector and the officer-in-charge of the Muar Police Station) testified that the complainant together with 58 illegal immigrants from Indonesia, were arrested on 6 September 1997. SP3 (the owner of Ban Xiang Restaurant of 7, Jalan Bakri, Taman Perdana, Muar) testified that the appellant walked into her restaurant, at about 3pm, on 25 September 1997, and handed RM5,000 to her for safe keeping, and that at 4pm, on the same day in question, she handed over that RM5,000 (P6) to two BPR (Anti-Corruption Agency) officers. SP4 (a lorry driver) testified that the complainant was arrested in September 1997, in connection with the offence of bringing in illegal immigrants, that he stood as surety for the release of the complainant, that the appellant said, when he met him at the Muar Police Station, that he ('appellant') could 'menyelesaikan kes ini', that the complainant said to him that the appellant had asked him for RM5,000 to settle his case, that the complainant and his G H I

A brother (Sethu a/l Arumugam) were involved in activities bring in illegal immigrants, and that he was convicted, about four or five years ago, by the Jasin Magistrate's Court for the offence of bringing in illegal immigrants. SP5 (Sethu a/l Arumugam, a detainee at the Kamunting Detention Camp) testified that his younger brother, the complainant, was arrested in September 1997, in connection with the offence of bringing in illegal B immigrants, that the complainant said to him that the appellant had asked for RM9,000 to settle the case involving three persons, that is, to prefer lesser charges against the complainant, that the complainant decided to report the matter to the BPR, and that the complainant reported the matter to the BPR on 20 September 1997.

C Under cross-examination, SP5 testified that he met the appellant outside the Muar Police Station. The complainant, their mother and SP4 were then inside a car. The appellant walked over and said 'Hello'. The appellant said he wished to speak to the complainant. The appellant spoke to the complainant. They (SP5 and complainant) knew that the appellant had no power to close the case.

D SP6 (a Police Sergeant attached to the Muar Police Headquarters who said he was one of several officers who interrogated the complainant and two other arrested persons) testified that the appellant was the officer who most interrogated the complainant, that they (interrogating officers) told the complainant and the other two arrested persons that the decision E whether to prosecute them was in the hands of the investigation officer. SP7 (a police corporal attached to the Special Branch) testified that the appellant was one of the officers who interrogated the complainant. The complainant spoke Tamil and the appellant interpreted. The complainant was interrogated on many occasions.

The complainant himself (SP8) testified that he was arrested on F 6 September 1997. Whilst he was held at the Muar police lockup, the appellant recorded his statements. On 10 September 1997, the appellant informed him that his case was serious. The appellant asked for RM5,000. The appellant told him that there were five charges. The appellant said, 'sekiranya saya (meaning complainant) memberikan jumlah RM5,000 kes G saya akan diringankan'. He was detained until 19 September 1997. On that day, he was released on police bail. On the 19th, while he was in car in the station compound, the appellant arrived in a car. The appellant walked over. The appellant asked him to settle the sum requested before 1.30pm. He said that as he was just released from police detention, he could not find that sum. He asked for a week to pay the sum. Later, he informed SP5 of H the appellant's request. On the 20th, SP5 took him to the BPR office at Batu Pahat. He reported (P7) the matter to the BPR. At about 2pm on 25 September 1997, a BPR officer (Vijaya Sundram a/l Tangavellu — SP11) instructed him to telephone the appellant. SP11 recorded the telephone calls. In the first telephone conversation, he said to the appellant that he (complainant) had the money; the appellant instructed him to I deliver the money to his (appellant) house. In the second telephone conversation, he informed the appellant that he could not deliver the money as instructed 'kerana kaki saya sakit' (it was a ruse to enable a BPR officer

to accompany the complainant and witness the transaction). The appellant instructed him to wait outside his house, at lamp post 81 Jalan Abdul Rahman, Parit Perupok. The appellant said that he would go there. Later, the appellant arrived. 'Dia kata dia enggan menerima jumlah wang tersebut dan kata ingin cakap sedikit dengan saya. Selepas itu dia membawa saya dalam keretanya. Dalam kereta tertuduh memberitahu saya agar jangan 'sangkutkannya' kerana dia ada keluarga'. In the car then in front of a restaurant at the second ms Jalan Bakri, he handed RM5,000 to the appellant. A BPR officer (Subahar a/l Subramaniam) had given that RM5,000 to him. After he handed that RM5,000 to the appellant, the appellant alighted from the car and walked into the restaurant. But before he alighted, the appellant said that he (appellant) was meeting an officer inside the restaurant. The appellant was inside the restaurant for about five minutes. The appellant sent him (complainant) home. When he arrived at his house, the complainant was arrested by BPR officers. A BPR officer asked him to relate the whereabouts of the money. He informed the BPR officer that he had handed it to the appellant. The BPR officer interrogated the appellant. He informed the BPR officers that the appellant had entered a restaurant at Jalan Bakri. The BPR officers took him to that restaurant. The BPR officers entered the restaurant. He was given to understand that the money was found in a counter in the restaurant.

Under cross-examination, SP8 testified as follows. He was arrested for the offence of bringing in illegal immigrants. He commenced that activity in January or February of 1997. SP7 and the appellant were two of the officers who interrogated him throughout. The appellant interrogated him most of the time. SP6 informed him and he (complainant) believed that SP6 was not the investigation officer. SP6 did not say that the decision whether to prosecute him was in the hands of the investigation officer. As SP6 had not said so, he believed the appellant that 'kesalahan saya boleh diringankan'. While he was held in the lockup, he gave six statements to the appellant. As the appellant spoke Tamil, he (appellant) recorded his statements. Although he was asked, he did not implicate SP5 in his activities. The appellant asked for money on the 10th and thereafter. The appellant asked for RM9,000 from him. On the day he was released from police detention, the appellant asked for RM2,000 from him. 'Dia kata dia mahu balik kampong dan meminta saya mencari RM2,000 pada hari 19 September 1997. 'Saya setuju dia tidak meminta RM5,000 hari tersebut'. After 1.30pm on the day he was released, the appellant telephoned him and asked if he was ready with the money. The appellant first asked for RM2,000, and then for RM5,000. He discussed the appellant's demand with SP5 and the other two arrested persons. One of them proposed to report the matter to the BPR. On 25 September 1997, before he entered the appellant's car, the appellant asked if he (complainant) had the money. He answered 'ya'. The appellant did not allow Subahar a/l Subramaniam who was then with him (complainant) to enter his (appellant) car. On 25 September 1997, he had not lent any money to the appellant for Deepavali. The said RM5,000 was not a loan to the appellant. The appellant first asked for money on 10 September 1997. Under re-examination, SP8 said that the appellant

A asked for RM9,000; it being RM5,000 from him, and RM4,000 from the other two arrested persons, Kanagarajah and Pasam.

SP9 (the head of the BPR, Batu Pahat) testified that at about 10.30am on 25 September 1997, he briefed his officers as to their respective roles concerning P7. SP10 (the investigation officer of the BPR, Batu Pahat) B testified as follows. He was instructed to accompany the complainant to witness the transaction. SP11 recorded the telephone conversations. He handed RM5,000 to the complainant. Together with the complainant, he waited at lamp post 81 for the appellant. The complainant pointed out the appellant to him. The appellant did not get down from his car. The complainant informed the appellant that he (complainant) had the C RM5,000 with him. The complainant then sat on the front passenger seat. He tried to enter the car but he was stopped by the appellant. The appellant said, 'saya takut awak akan set saya'. Leaving him by the roadside, the appellant drove off with the complainant. He informed SP11 that the appellant would not permit him to enter the car. SP11 instructed him to wait at the same place. A short while later, the appellant returned with the D complainant. The complainant signalled that the money had been handed over to the appellant. Under cross-examination, SP10 testified that the complainant spoke in Tamil saying that he had RM5,000 with him (meaning complainant). He did not hear the appellant saying that he (appellant) would not accept the money. He said, 'saya nak ikut' when he E tried to enter the car. The appellant stopped him. He asked, 'kenapa tak bolih ikut'. The appellant answered, 'awak akan set saya'. SP11 arrested the appellant. He assisted in the arrest. SP11 interrogated the appellant as to the whereabouts of the money. SP11 asked the same from the complainant. Under re-examination, SP10 testified that the appellant asked the complainant to enter the car and that the appellant also said to him, 'awak F tak payah ikut'.

SP11 (Penguasa BPR Batu Pahat) testified that he received a complaint, on 20 September 1997, from the complainant, concerning a demand from one Seelan for RM5,000. He attended the briefing given by SP9. He recorded the telephone calls to the complainant's house. He G handed RM5,000 to SP10. He positioned himself in an empty house near lamp post 81. A short while later, he realized that the complainant and SP10 were not around anymore. SP9 instructed him to wait there. SP10 returned about half an hour later, and said that he had failed to follow the target car. He instructed SP10 to wait for the complainant to return. At about 3.50pm, a car stopped by the road side. SP10 informed him that it was the target car. H He identified himself and arrested the appellant. He read the caution under s 15 of the Act. He could not find the money on the appellant. He asked the complainant. The complainant informed him that the appellant had entered a shop. He proceeded to a 'kedai makan'. There, he met SP3. He asked SP3 if a police officer had handed a sum of money to her. He recovered the said money from SP3. He prepared the transcripts of the telephone I conversations. Under cross-examination, SP11 testified, that in the telephone conversations, the complainant said, 'Kes saya abang boleh tutup? Abang beritahu berapa duit abang hendak, while the other person

said, 'Bagaimana saya tanya IO kes. Saya tak boleh. Saya kerja office lain. Tanya abang kamu'. A

The final witness for the prosecution (SP12) was the investigation officer who added nothing of substance to the body of evidence.

In his oral submission both here and below, Mr Kumaraendran for the appellant admitted and or conceded that the appellant, at the stated time B and place, did indeed receive the stated sum of RM5,000 from the complainant. But really, that essential fact, and in criminal trials where the accused pleads not guilty, 'the practice is to insist of proof of all really essential fact' (*Sarkar on Evidence* (24th Ed) pp at 1028–1029), was already strictly proved on the record. To begin with, the said RM5,000 (P5) was C recovered at 4pm on 25 September 1997 from the premises of SP3 who testified that the appellant handed that money to her an hour earlier for safekeeping. Next, the serial numbers of those bank notes recovered totally tallied with the serial numbers of the bank notes recorded earlier by the BPR officers on P6. Together, those two clearly established facts said that the said RM5,000 recovered was that RM5,000 that the BPR officers handed D to the complainant just about the time immediately before the complainant entered the appellant's car. Then there was the testimony of the complainant that he handed, whilst he was inside the appellant's car, the said RM5,000 to the appellant who then entered the restaurant of SP3. All that uncontroverted evidence would not allow the essential fact that the appellant received the said RM5,000 from the complainant to be called into E question. That the appellant, who at the material time was a lance corporal in the Royal Malaysian Police, undoubtedly a public body (see art 132(1) of the Federal Constitution), was an agent of the Government of Malaysia was a further essential fact that could not be called into question. Unquestionably, it was more than made out that the appellant received the said RM5,000 from the complainant. But was it received corruptly? The F Act (see s 2) provides that gratification includes money. Given that definition, then plainly in the trial below of an offence under s 4 of the Act, it was proved that a gratification was received by a person in the employment of a public body. And because it was proved in that trial of the appellant for an offence under s 4 of the Act that a gratification was received G by the appellant, the presumption under s 14 of the Act arose (see *Balakrishnan v DPP* [1969] 2 MLJ 61, *Thavananthan a/l Balasubramaniam v PP* [1997] 2 MLJ 401, see also *PP v Thavananthan* [1994] 2 MLJ 436, where it was held that 'once a finding that corrupt money was passed (in that case handed) to the respondent, it was up to the respondent to rebut that the money was not corrupt money or show that it was innocently given H ...') that 'the gratification shall be deemed to have been received corruptly as an inducement or reward ... unless the contrary is proved'. But as a matter of fact, direct evidence was also adduced by the prosecution that the appellant accepted a gratification in what would, if true, be described only as a corrupt bargain. For even given that the presumption under s 14 of the Act was available, direct evidence was adduced that the said RM5,000 was I received corruptly. And to that end, evidence was given, not just by the complainant himself, but also by three police witnesses (SP2, SP6, SP7)

and two civilian witnesses (SP4, SP5) that the complainant was indeed arrested on suspicion of having committed certain offences, and by two police witnesses (SP6 and SP7) that the appellant was the officer who most interrogated the complainant. Evidence was also given by SP4, who steadfastly maintained that the appellant said that he (appellant) could 'menyelesaikan kes ini' (see pp 33, 36 and 37 of the appeal record). Obviously, proof against the appellant was made up of not just the bare allegation of the complainant alone. The most damning proof, but of course, was the acceptance of the gratification, by the appellant from someone whom he had just interrogated in the course of his police work and who was still not cleared (because he was only released on police bail) of wrongdoings under investigation. The complainant alleged that the appellant solicited and then accepted RM5,000 as inducement to the appellant to prefer lesser charges against him (complainant). Pertinent to the consistency of that allegation, evidence was also given by both SP4 and SP5 that the complainant had said that the appellant had asked for money. Indeed, when viewed objectively in the light of all the surrounding circumstances under which the gratification was accepted, it would only be inferred that the gratification could not have been accepted not corruptly. Indeed, in the light of the surrounding circumstances and established facts, the allegation of the complainant could not be given credence. Most definitely, when it closed its case, the prosecution had proved the two ingredients of the offence under s 4(a) to which s 14 of the Act applied, that is: (i) that a gratification was accepted by the appellant; and (ii) that the appellant was at the time of acceptance of the gratification in the employment of a public body. 'Upon proof of those two ingredients, the existence of the third ingredient that the gratification was paid or given or received corruptly as an inducement or reward for doing or forbearing to do an act in relation to the affairs is to be presumed unless the contrary is proved' (*PP v Yuvaraj* [1969] 2 MLJ 89). On the charge of corruptly receiving money, it is not necessary to prove that favour had been shown (*Gurbachan Singh v PP* [1966] 2 MLJ 125), or that the appellant had the power to do what he promised (*Lim Chong Kooi v PP* [1965] 2 MLJ 169), or that the favour sought was in relation to the principal's affairs (*Mohamed Taufik v PP* [1975] 1 MLJ 36). 'The prosecution has not to establish anything more than the payment of money (see *State of Madras v Vaidyanatha Iyer*AIR 1958 SC 61 and *Emden v State of Uttar Pradesh* AIR 1960 SC 548). It then becomes the duty of the appellant to disprove what s 14 begins to presume against him' (*Attan bin Abdul Gani v PP* [1970] 2 MLJ 143, per Sharma J). Moreover, in the present case, there was direct evidence clearly establishing that the gratification could not have been accepted not corruptly. There was certainly more than sufficient credible prima facie evidence establishing each essential ingredient for a supposition of guilt if it was not answered (see *PP v Sukumaran a/l Sudram* [1999] 4 MLJ 462). There was a prima facie case to answer. There was a presumption to rebut. By calling for the defence, the trial court was only doing justice to the evidence. The trial court could not have decided otherwise.

The appellant testified (now paraphrased) as follows. He was a lance corporal in the Royal Malaysian Police and attached to the Special Branch. On 8 September 1997, he was instructed to interrogate three suspects (the complainant, Passam and Kanagarajah) in PATI (pendatang tanpa izin) activities. On 8 September 1997, he together with SP6 and SP7 interrogated those 3 persons. The interrogation ended on 18 September 1997. On 15 September 1997, he saw that the face of the complainant was swollen. He had not assaulted the complainant. On 10 September 1997, he had not asked for RM5,000 or RM9,000 from the complainant. The complainant, when he (complainant) was released on police bail on 19 September 1997, at 11am, walked straight over to him. He advised the complainant to offer thanksgiving and not to return to the police station. He reminded the complainant to furnish the information that he had promised during interrogation. 'Seterusnya saya telah memberikan nombor telefon bimbit saya kepada dia. Semasa soal siasat, SP8 tidak memberi alamat Cina itu kepada saya, cuma beliau bagi nama samaran dan butir-butir lain akan diberitahu kemudian apabila dibebaskan'. On 19 September 1997 at 11am, he had not asked for RM5,000 from the complainant or for RM4,000 from Pasam and Kanagarajah. On 19 September 1997, he had not asked for RM2,000 to be paid on 19 September 1997. ' ... pada hari itu yang sama saya tidak menghubungi SP8'. Whilst he was on leave, from 19 September 1997 to 25 September 1997, and then in Kuantan, the complainant contacted him. The complainant asked, and he replied that he would be back in Muar on 25 September 1997. He asked the complainant for the said information. The complainant said that he would give that information on 25 September 1997. When he returned to Muar, on 25 September 1997, he contacted the complainant for the said information. 'Jawapan adalah bahawa maklumat telah diperolehi'. The complainant asked him to wait for his telephone call. At about 2.30pm, he received the complainant's call. The complainant asked whether his case could be closed. He said that he was not the investigation officer. 'Saya bagi tahu bahawa saya bertugas di cawangannya dan menyuruhnya berjumpa dengan abangnya'. At 2.40pm, the complainant contacted him for the second time. The complainant informed him that he (complainant) had injured his leg. The complainant wanted to meet him. The complainant called to provide the said information. He agreed to meet the complainant at Jalan Abdul Rahman, Muar. At Jalan Abdul Rahman, he saw the complainant with another person. He inquired from the complainant as to the cause of his (complainant) injury. The complainant replied that it happened during work. He invited the complainant to enter his car. 'Ketika itu beliau memberitahu bahawa beliau ada wang yang hendak diberikan kepada saya. Saya terkejut dan bertanya 'wang apa' serta memberitahunya bahawa saya tidak mahu wang, saya datang ke sini untuk mendapatkan maklumat sepertimana yang dijanjikan awak. Seterusnya saya mengajaknya masuk ke dalam kereta saya'. The other person wanted to enter his car. He did not permit him to enter, as the information to be given by the complainant 'merupakan suatu maklumat keselamatan berkemungkinan jika lelaki India itu ikut bersama, maklumat itu akan bersebar'. He did not say anything to

A that Indian person. After the complainant had entered his car, he asked where he could meet that Chinese person. Directing him to drive towards Jalan Bakri, the complainant said that he would inform him shortly. 'Dalam perjalanan kami berbual kosong. Oleh sebab saya berkeyakinan kepada SP8 saya pun layannya di mana beliau bertanya kepada saya latarbelakang dan kedudukan kewangan saya. Saya menceritakan secara ringkas kepadanya
B bahawa menjelang Deepavali akan tiba, beliau bertanya saya "Adakah saya menerima bantuan kewangan?" Pada masa itu terlintas fikiran saya untuk bertanya kepada beliau samada SP8 mengenali mana-mana orang yang boleh memberi sedikit pinjaman kepada saya'. The complainant spontaneously replied, 'Jangan risau, saya boleh meminjam wang kepada
C abang dan abang bayar balik bila abang mampu lalu mengeluarkan sejumlah wang di hadapan saya. Dalam keadaan terkejut saya bertanya SP8 jumlah itu adalah banyak. Beliau menjelaskan kepada saya, 'inilah wang RM5,000 dan saya akan bagi pinjaman kepada abang dengan ikhlas dan abang bayar balik bila ada. Selepas itu saya menjelaskan kepadanya 'Duit itu akan saya bayar dengan ansuran atau melalui kooperasi polis'. Dalam
D masa itu, saya mengingatkan beliau walaupun beliau membantu saya dengan pinjaman itu, beliau harus bekerja dalam pemberian maklumat. Selepas saya menerima duit tersebut saya telah singgah di restoran Ban Li Xia di Jalan Bakri, Muar'. He informed the complainant that he had to meet a friend and entered the restaurant. He handed that RM5,000 to a female Chinese 'dengan memberitahunya saya hendak pergi ke balai apabila saya
E balik nanti saya akan mengambilnya'. Being a policeman, he was not allowed to have more than RM10 with him. He was afraid that the RM5,000 could be dropped or lost. He did not know that BPR officers were trailing him. After he had come out from the restaurant, he went back to his car. He asked the complainant where should he drive to. The complainant
F gave him some sketchy details about the Chinese person and directed him to a restaurant at Taman Perdana. But near that place, the complainant asked him to proceed alone to look for the suspect. He did not find the suspect in that restaurant. The complainant asked him to drive to two different bus stands and to one other restaurant. At all those places, he could not find the suspect. The complainant then asked him to drive him
G (complainant) home. He asked the complainant for the said information. The complainant asked him to be patient and to wait for his (complainant) call. But when he reached the complainant's house, he was arrested. The said RM5,000 was not an inducement.

Under cross-examination, the appellant agreed, that he was part of the
H interrogation team as he was conversant in Tamil, that the other interrogation officers (SP6 and SP7) would not understand what was said between him and the complainant in Tamil, and that the interrogation of the complainant was completed on 19 September 1997. However, the appellant disagreed that it was the testimony of SP6 that his (appellant) report on his interrogation was not clear, or that his report was not clear as
I it was his (appellant) intention to solicit for an inducement. He was on leave on 19 September 1997, but he was at the Muar Police Station on 19 September 1997 to report that he was back from leave and not to solicit

for money. His testimony pertaining to the Chinese person was not a fabrication. He only got to know the complainant whilst he (complainant) was under remand. 'Ya, semasa soal-siasat ke atas SP8, saya sudah tahu bahawa beliau melakukan jenayah dengan menyeludup PATI'. As a member of the Royal Malaysian Police, it was not an offence for him for accept a loan from the complainant. It is not true that the only episode that transpired in the car was his demand for money from the complainant. 'Betul, selepas saya menerima wang RM5,000 daripada SP8, saya ada pergi ke restoran Bang Li Xia'. He had not forced SP3 to keep the money for him. It is not true that he had asked SP3 to keep the money for him so that if ever he was arrested it would not be on him. He had not accepted the money as an inducement to reduce the charges against the complainant. Re-examined, the appellant said that he only chanced upon the complainant on 19 September 1997, when he went to the Muar Police Station to surrender his pistol.

For the time being, and without going into the reasons of the trial court, suffice it to say that the defence of innocent loan was disbelieved by the trial court. Now, one of the four grounds argued by Mr K Kumaraendran who said he would limit his arguments to those four grounds (the other three grounds would be related in the course of this judgment) was that 'the trial court failed to consider that the alleged payment by the complainant could not have been corrupt payment'.

But really, there was no basis to say that the trial court had not considered the defence. As a matter of fact, the defence was painstakingly considered, in all its aspects. At pp 11–12 of its judgment (see pp 178–179 of the appeal record), the trial court held that the evidence showed that the complainant had no means to have given the loan. And at pp 35–36 of its judgment (see pp 202–203 of the appeal record), the trial court further held that it was difficult to believe that a person of the appellant's position and standing would at all have needed RM5,000 to celebrate Deepavali. It would be fair to say that the defence of innocent loan was carefully considered. Just that it was not considered as the appellant would probably want it to be. Just that the defence was disbelieved. And in that latter regard, the trial court gave more than just those two reasons for not believing the defence. Amongst the additional reasons proffered by the trial court, were, the total absence of any factors as would give rise to any possible reason or motive on the part of the complainant to frame the appellant, the conflicting testimony of the appellant with regard to his whereabouts on 19 September 1997, and the absence of any reason for the appellant to contact the complainant, with the completion of the interrogation on 19 September 1997, for any information relating to any said Chinese person allegedly behind the PATI activities.

The next complaint against the grounds of judgment of the trial court was 'that the trial court did not assess the credibility of the prosecution witnesses at the end of the prosecution case, but only at the end of the defence case'. 'Even in a prima facie case, there must be some assessment before the defence could be called', Mr Kumaraendran submitted. But there was an assessment of the prosecution evidence at the close of the

prosecution case. To confirm that, one only has to look at the grounds of judgment itself. At pp 8–9 of its judgment (see pp 175–176 of the appeal record), the trial court identified the ingredients of the alleged offence, and then set about, at pp 10–13 of its judgment (see pp 177–180 of the appeal record), to collate and assess the evidence adduced at the close of the prosecution case in relation to the ingredients of the alleged offence. At pp 13–18 of its judgment (see pp 180–185 of the appeal record) the trial court even addressed the 'defence' that was disclosed by the defence through its cross-examination of the prosecution witnesses, in addition to all the points raised by learned counsel at the stage of submissions at the close of prosecution case. Therefore, to say that the trial court had not assessed the prosecution evidence could not be further from the truth. If at all to be faulted, the trial court had assessed beyond what was required. As correctly spelt out by the trial court, the ingredients of the offence under s 4(a) to which s 14 of the Act applied, was: (i) that a gratification was accepted by the appellant; and (ii) that the appellant was, at the time his acceptance of the gratification, in the employment of a public body. Accordingly, to call or not for the defence was a matter wholly dependent upon proof of just those two ingredients. It was not essential to address the 'defence' disclosed by the defence through its cross-examination of the prosecution witnesses. The acceptance of the gratification and the employment of the appellant in a public body were all that were required to be proved. And in the instant case, both ingredients were clearly proved, and proved, it must be said, not on just a prima facie basis, which was enough to call for the defence, but on a beyond reasonable doubt basis, and by irrefutable proof that would not be deprecated by the matter of the creditability of prosecution witnesses. Really, the prima facie case was founded on such clear cut proof, because proof of all ingredients of the alleged offence were irrefragable and in the event were not challenged nor denied, and the prima facie case as such was that evident, that no assessment of the credibility of prosecution witnesses at the close of the prosecution case was at all necessary.

The last two grounds against the judgment, which were raised but not expounded at any length, were 'that the complainant was not a reliable and credible witness', and, 'that the trial court took as corroborative that which was not corroborative'. With respect, both latter grounds only divulged that it was not appreciated that the prima facie case was more or less ironclad, and that the presence of any inconsistency or discord, if any, in the testimony of the prosecution witnesses or between any of them — with regard to the feigned leg injury of the complainant, with regard to the exact matters conversed between SP6 and complainant, and, with regard to the content in the police report of the complainant — would not affect the quality of the proof of the ingredients of the alleged offence. Proof of the ingredients of the alleged offence was beyond doubt. In that connection, surely not insignificantly, the acceptance of the gratification and the employment of the appellant were not challenged nor denied. Thereupon, the die was cast. The presumption applied, and it behooved upon the appellant to rebut the presumption that the acceptance was corrupt. In any

event, the fact that there were minor discrepancies in the testimony of the complainant did not straightaway make him an unreliable witness and make the whole of his evidence unacceptable (see *Mohamed Alias v PP* [1983] 2 MLJ 172). Besides, when acceptance was clearly proved, how ever could the complainant be held to be unreliable? A

Mr Kumaraendran submitted that the presumption had been rebutted. '... the alleged payment by the complainant could not have been corrupt payment'. First, let it be said that the grounds (only those enumerated in this grounds) given by the trial court for not believing the defence of a friendly loan were both logical and balanced. Given the same set of established facts and circumstances, no reasonable court would not have given the same said grounds for similar disbelief. Any reasonable court would have discounted the probability of the defence in the instant case by reason of those grounds. The trial court could have added as well that given that the relationship between the complainant and appellant who were certainly not friends but who only met when on opposing sides, that the chance of any innocent loan of RM5,000 and RM5,000 was not an insignificant sum, ever being granted by the complainant to the appellant, with no strings attached whatsoever, must be rated at best as remote. B C D

Other aspects of the appellant's explanation, and all pertained to the all important transaction in the car, also raised questions on the probity of the defence. The appellant testified that he invited the complainant to enter his car. 'Ketika itu beliau memberitahu bahawa beliau ada wang yang hendak diberikan kepada saya. Saya terkejut dan bertanya 'wang apa' serta memberitahunya bahawa saya tidak mahu wang, saya datang ke sini untuk mendapatkan maklumat sepertimana yang dijanjikan awak. Seterusnya saya mengajaknya masuk ke dalam kereta saya'. If there was any truth in that latter testimony, then the appellant already knew that the complainant intended to offer money to him. But yet being an officer of an elite branch of the police and with 13 years of service under his belt, the appellant invited the complainant whom he had just interrogated into his car. That would not have been the conduct of an experienced and honest officer. Even an inexperienced but honest officer would not have invited the complainant, who was not just anybody but someone whom the appellant had just interrogated and who was released only on police bail, into his car. Perhaps the appellant was that gullible. But what about his testimony that the complainant offered him financial help just as he was about to ask the complainant to introduce someone who would grant him a small loan? Could it have been that fortuitous? What about his testimony that he intended to repay the loan by installments or 'police loan'? Was the appellant merely melodramatic? Or was the appellant that scatter-brained, borrowing heavily and then intending to repay a sum many times his monthly salary (that of a police corporal) by onerous instalments or 'police loan', merely to celebrate Deepavali that was still two months away? Could it be that the appellant totally lacked all good judgment? Or would it be that the explanation was improbable? Nope, given all the improbabilities arising, no reasonable man would say that the explanation of the appellant was E F G H I

A reasonable or probable. Quite clearly, on the balance of probabilities, the appellant had not rebutted the presumption.

Nevertheless, could there be any doubt as to the guilt of the appellant. Mr Kumaraendran submitted that there was on account of the following: (i) the testimony of a loan was not challenged; (ii) the testimony that the B RM5,000 was handed to SP3, as the appellant, who was on duty, could not have more than RM10 with him, was not challenged, and (iii) the testimony of SP9 (see p 96 of the appeal record) that the appellant had said, in his telephone conversation with the complainant, on 25 September 1997, that he (appellant) could not help the complainant.

C Pointing however to the record of the proceedings (p 112 of the appeal record, between lines 19–21) the learned deputy public prosecutor, Cik Azliza bte Ali, replied that the defence of a loan was challenged. It was the testimony of the complainant that it was not a loan, she added. Indeed it was the clear and categorical testimony of the complainant that the said RM5,000 was not a loan. Thus, the defence of a loan was unequivocally D denied, and accordingly challenged, by opposing testimony to the contrary. Hence, given that the issue was obviously in dispute, any challenge in the instant case, by the prosecution officer cross-examining the appellant, would only have been merely symbolic.

Granted, the explanation by the appellant — that he handed that RM5,000 to SP3, as he could not have more than RM10 with him — was E reasonable (currently, the Inspector General of Police's standing order) (see para 5.10 PTKPN A 118) stipulates that no police officer on beat or patrol duty can have more than RM30 with him). Yet, it was only an explanation as to his handing over of that RM5,000 to SP3. It was not any explanation as to his acceptance of the said RM5,000 from the complainant. Quite F clearly, no doubt could arise on account of the prosecution not having challenged that aspect of the appellant's testimony.

Granted that the appellant might have said to the complainant, in the telephone conversation before they met, that he could not help the complainant. But whether the appellant could or could not help was not the issue. The appellant accepted a gratification other than legal remuneration. G A public servant has no business to accept gratification other than legal remuneration. The acceptance of gratification other than legal remuneration must be explained. As said, the explanation was not reasonable nor probable.

There is no reason to disturb the finding of guilt arrived at by the trial H court. 'The evidence was so clearly against the [appellant] that no court using the standards of any reasonable man could possibly have come to any other inference except the clear guilt of the [appellant]' (*Mohamed Mokhtar v PP* [1972] 1 MLJ 122, per Sharma J). This is not a conviction without corroborative evidence. The acceptance of the gratification was clearly corroborated, by SP3 who testified that it was the appellant who handed I that RM5,000 to her. Guilt was beyond doubt. Conviction must stand. The appeal against conviction is dismissed. As for the sentence of the trial court, both sides only submitted that the additional penalty, in the event of

dismissal of this appeal, must be imposed (see *Lee Mun Foong v PP* [1976] 2 MLJ 16). Allowing the cross appeal, the appellant is additionally fined in the sum of RM5,000 (equivalent to the sum accepted — see *Jazuli bin Mohsin v PP* [1990] 2 MLJ 190) in default to three months' imprisonment.

Appeal against conviction dismissed and cross appeal against sentence allowed.

Reported by D Sivalingam